

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**STEPHANIE J COUCH**  
Claimant

**APPEAL NO. 06A-UI-11422-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N GO CONVENIENCE STORES INC**  
Employer

**OC: 11/05/06 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated November 27, 2006, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 13, 2006. Claimant participated personally. Employer participated by John Judge, Supervisor. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 30, 2006.

Claimant was discharged on October 30, 2006 by employer because claimant closed the store early. Claimant was ill on October 30, 2006. Claimant called in asking for help so she could go home sick. No one arrived. Claimant was discharged for closing early. Employer terminated claimant's employment at that particular store. Employer asserted that claimant could have worked at another store. However, when claimant gave two weeks' notice, she was promptly discharged. Claimant had no warnings on her record. It is a violation of policy to close early.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

- (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning closing early. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because leaving work early due to illness is an excusable event. This is the last thing that brought about the separation. But for the alleged transfer due to leaving early there would not have been a separation. Claimant's quit came after the termination of employment and reassignment. Therefore claimant was discharged. Claimant closed a store early because of illness. Since employer was informed of the illness this is an excusable event. Employer presented part of its case by means of hearsay. As an issue of law hearsay is less credible than sworn testimony. Therefore, where conflicts exist the sworn testimony is more credible. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated November 27, 2006, reference 04, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs